Mills, David (1831-1903)
Speech on duties of election officials.
Ottawa, 1892.

House of Commons Debates.

SECOND SESSION—SEVENTH PARLIAMENT.

SPEECH OF MR. MILLS, M.P.,

ON

DUTIES OF ELECTION OFFICIALS.

FRIDAY, MARCH 4TH, 1892.

DUTIES OF ELECTION OFFICIALS.

Mr. MILLS (Bothwell) moved :

That it is the undoubted right and duty of the House of Commons to see that the returning officers and other officials who have duties imposed upon them in the election of members to this House, act with perfect fairness towards the various candidates, and to hold such returning officers and other officials to the strict discharge of their duties; and this House further affirms that the trial of election petitions by the courts does not lessen the authority of the House over such officials, nor take away the necessity for its supervision.

He said: Mr. Speaker, I gave notice yesterday, with the assent of the leader of the House, that I would to-day make a motion in reference to the duties of this House in relation to the elections which may be from time to time held. The motion which I now propose affirms that it is the undoubted right of the House of Commons to see that the returning officers and other officials who have duties imposed upon them in the election of members to the House, should act with perfect fairness to the various candidates, and to hold such returning officers and other officials to the strict discharge of their duties. The motion also says: "This House further affirms that the trial of election petitions by the courts does not lessen the authority of the House over such officials, nor take away the necessity for its supervision." I think, Sir, that the doctrine laid down in this motion is too clear to admit of controversy. The House is the judge of its own rights and privileges, and it is also its duty, as the representative body of the nation, to see that those who become members of the House, do so in accordance with the provisions of the law of the land. I do not say, Sir, that it is always necessary that this supervision should express itself actively; it is sufficient that it potentially exists, called into activity only when there is some abuse, some disregard of duty, some misconduct or malfeasance in office on the part of officials who are required to discharge duties in the way prescribed by the law of the land. The subject is an important one, because every departure from perfect fairness in the discharge of duties by an official may affect the results which ought to be accomplished by the exercise of the elective franchise. The effect of such unfairness may alter the representation in Parliament; and in so far as it accomplishes this end, the influence and respect which this House should command in the country will be seriously weakened. It must not be forgotten that under our system of parliamentary government the administration is always an interested party. But there is one marked difference between our system and that which exists in England, that here the Ministry as an interested party have it within their power to exercise an amount of influence, and to exercise that influence in an undue way, which is not open to an Administration in the United Kingdom. I say, Sir, that this power in reference to elections, which is possessed by the Ministers here in a larger degree than it is possessed by Ministers in the United Kingdom, requires on the part of this House even a more active vigilance than is called for by the duties that devolve upon the House of Commons in the United Kingdom. In the United Kingdom, the Clerk of the Crown in Chancery, when he receives the warrant of the Speaker, is required to issue the writ to an officer appointed by the law, a permanent official of the House, for the purpose of having an election in a particular district. It is not open to the Administration to interfere. The power of Ministers over the Clerk of the Crown in Chancery, their power to interfere with him in the discharge of his duties, so far as the law is concerned, is there no greater than the power of other members of the House of Commons. But, Sir, that is not the case here. A few years ago, an Act was passed in this House repealing the law which named certain officials as permanent officers of the House for the purpose of holding elections. So long as that law continued on the Statute-book, it was open to the Clerk of the Crown in Chancery in Canada to discharge the duty in precisely the same way that the Clerk of the Crown in Chancery in the United Kingdom discharges his duty. But, Sir, by the repeal of that law, the relation between the Administration and the Clerk of the Crown in Chancery was very seriously interfered with. The Administration was given a control over that officer in the discharge

of his official duties which is altogether unknown to the law in the United Kingdom. The result of this is that one of the parties interested in every contest that takes place possesses an undue influence in that contest. The Clerk of the Crown in Chancery cannot issue the writ, he cannot conform to the warrant issued by the Speaker, until the Administration make known to him whom they have appointed as returning officer for the purpose of holding the election ; and so, however desirous he may be to discharge his duty, in conformity with the spirit and intention of the Act, his good intentions in that respect are frustrated ; his ability to conform to the requirements of the law are rendered nugatory, so long as the Administration choose to refrain from appointing an officer to hold the election. That being the case, it is of the first consequence that Parliament should watch carefully every step taken in every election which is being held in any portion of this Dominion. We sometimes hear it said here that parties are disposed to live and to die British subjects. I am not going to discuss the question of dying, because I suppose most hon. gentlemen like to stay where they are acquainted ; and so, I suppose, they have no particular anxiety to end their days in any hurried manner. But, Sir, I may say that those who are anxious to live as British subjects in Canada ought to be anxious to maintain the spirit and principles of British institutions ; and it is not maintaining the spirit and principles of British parliamentary government to put it in the power of an Administration to exercise an undue influence through the instrumentalities which are employed in holding a parliamentary election. The Government, I say, are always a party to every election contest that takes place ; and in the election contest to which I am about to refer, the one which has recently taken place in London, a Minister of the Crown was one of the candidates. That Minister of the Crown was also a party to advising His Excellency who the returning officer and the various deputy returning officers, within the constituency, should be. Hon. gentlemen will see, then, that the relation between one candidate and all the officials employed holding the election is quite different from the relation between the other candidate and those officials. So, where these large powers are given to an Administration, it is of all the more consequence to see that the parties who are appointed for the purpose of holding an election strictly conform to the law. I say, Sir, that Parliament always has the power to protect itself ; and the appointment of an election court, for the purpose of trying controverted elections, does not at all derogate from the power that is inherent in the House of Commons. So far as a particular class of matters are concerned, it may be important that the House should abstain from taking any action where the courts are called upon actively to interfere and to adjudicate in reference to litigated matters. That the original authority and right of Parliament is not derogated from by the substitution of a court of justice for a committee of the House in the trial of controverted elections, was admitted in a discussion that took place in this House some years ago. In that discussion, Mr. Blake said :

" He would be very sorry to believe that the House had been deprived, by the position of the Controverted Elections Act, of its power over returning officers and deputy returning officers—of its power to investigate complaints made against them, and to punish them for improper conduct."

And Sir John Macdonald, in speaking in the same debate, said :

" He was glad the hon. member did not propose to ask the House to consider the points raised in the petition when the election case was before another tribunal ; at the same time it was not to be supposed that the House had abandoned its right to control, censure and if need be, punish, returning and deputy returning officers."

So that, so far as the power of Parliament is concerned, there can be no question that the power does exist, that this House has inherently in itself the power to supervise the officials it employs to hold elections in any constituencies ; and while in some cases it may not be necessary to intervene, it is always proper to observe, so that, when there is a serious abuse of authority, when there is an abuse of office, this House may use the power with which it is vested in the public interest for the purpose of protecting the rights of parties which are affected when the power can be more conveniently exercised by this House than by any other tribunal or party. This is obvious for this reason. Let me suppose, for instance, that the returning officer should return to this House a party who had received a minority of votes, a party who is an alien, a party who is a felon, and no objection had been filed in the case, no action had been taken in the case—clearly the House is not in such a helpless position that it could not purify itself and protect the rights of the electors of the country against any intrusion or abuse of that kind. The returning officer may commit a fraud upon the House, he may return a candidate having a minority of votes, and surely it is open to this House to call on the Clerk of the Crown in Chancery—and it has been done again and again—to produce the return made and to insist upon an amendment of the return in accordance with the facts. If there be any question of law, if there be any question of litigation between the parties, if no reference is made to the courts for adjudication, it is open to this House to protect itself against abuse and against any person who has no right to sit here now, just as much as it was in the former history of Parliament. As a rule the courts have to consider questions of law and fact, and the conclusions of the law from the facts so stated and proved, but, where the question is merely one of arithmetic and nothing more, I think it is clear that the observations made by Lord Esher in an important case—the Bangor case which was tried three or four years ago—are strictly applicable, and it would be a neglect of duty for the House to refuse to do justice in the matter and to compel the parties to have recourse to expensive legislation. I do not mean, by the resolution I have proposed, that this House shall exercise a meddlesome oversight, that it shall use the power with which it is vested, where the employment of such power is unnecessary, but I say that, whenever it becomes clear that a wrong is about to be done, that authority is about to be abused, that the parties who are entrusted with the discharge of important duties are failing in their duty, the fact that this House is not indifferent to what is being done, that it is exercising a supervision over its officers, is calculated to have a very important and salutary effect, and when that supervision is exercised with fairness and moderation, I am certain that such abuses as existed in the Province of New Bruns-

wick a few years ago, in the case of an election to this House, are not likely to be very frequent, and this House will be saved trouble, and the public will be saved scandal, if this House holds its officers to a strict responsibility. I am asserting no more than this, that it is the duty of the officers of the House to obey the law. It is obvious that no department of Government could be satisfactorily administered if every difference between a superior officer and an inferior officer had to be litigated upon and decided by a judicial tribunal rather than by a decision of the superior officer, and therefore I say that, where it is obvious to the common sense and to the sense of fairness of every member of this House that a wrong is being done, the House would be derelict in its duty to the country if it failed to exercise the power with which it is vested and to insist upon right being done. Yesterday the House considered another branch of this subject, but to-day I will again refer briefly to the question as to who are the electors, who are the parties who are found upon the voters' list or who should be on that list when the election was held, the voters' list as put in the hands of the deputy returning officers, and how votes should be taken, how the enumeration should take place, and how, in any matter of controversy in regard to the enumeration, it is to be disposed of. These are the questions which I propose to ask the House to-day to consider and discuss. By section 30 of the Electoral Franchise Act, it will be seen that there were two classes of persons entitled to vote at elections, those persons about whose right to go on the list there was no controversy, and those persons about whom there were appeals pending. Of this second class, there are three special classes—first, those retained on the list notwithstanding an application to have them struck off; then those who are said to be struck off by the revising officer against whose decision an appeal is had to the county judge; and the third class is those who have applied to be put on the list and whom the revising officer has refused to put on the list. As I understood the Minister of Justice yesterday, we agreed that the first class should be on the list, that is, the revising officer having refused to strike them off, they should remain there. We also agreed that the third class, those the revising officer refused to put on, could not be on the list; but we differed as to the second class, those the revising officer had struck off the list but in regard to whom an appeal is made. I understand the Minister of Justice to maintain that those voters, notwithstanding the fact that they are struck off, are still on the list. I dissent from that opinion. I think there are two of three sub-classes off the list, and that they are noted when the list is required for the purpose of election. But if the law was in other respects complied with, there would be no practical mischief, perhaps, arising from the adoption of one or the other of these contentions. I am informed that in some instances, in the city of London, in the recent election, certain parties whose names were on the list and who were the subjects of appeal, instead of taking the oath X that they are required to take under the statute, took the ordinary oath of electors who are not the subjects of appeal, and it was contended that because their names were so printed upon the list, they had a right to vote upon the ordinary oath being administered. I mention this as one of the mistakes that arose, and that is likely to arise where there is no proper distinction made between names that are on the list as of right, and those that are on that list as a matter of controversy. The 32nd section of this Act with reference to voters' lists, shows how the Act is to be understood and interpreted. It can never be accurately or properly interpreted by looking at each individual section and undertaking to construe that according to the strict grammatical import of the words. In both Chapter 5 and Chapter 8 of these Consolidated Statutes, we must look at the whole Act, consider every provision of each of these Acts, and so construe them that they may all stand together, and best carry out the intention of Parliament. Section 33 shows that the class that is struck off the voters' lists under section 30, have seven days within which to appeal from the decision of the revising officer to the county judge, and the reason of such a time being given for that appeal is to allow them being restored to the list. Until that restoration takes place it seems to me that they do not stand upon the list. Then, if we look at section 56 of Chapter 8, we find the same limitation on the proceedings before the deputy returning officers in making the count of the votes that have been polled. The first part of that section provides:

"Immediately after the close of the poll, the deputy returning officer shall, in the presence of the poll clerk and the candidates, or their agents—and if the candidates and their agents or any of them are absent, then in the presence of such, if any, of them as are present, and of at least three electors,—open the ballot box and proceed to count the number of votes given for each candidate; and in so doing he shall reject all ballot papers which have not been supplied by the deputy returning officers, all those by which votes have been given for more candidates than are to be elected, and all those upon which there is any writing or mark by which the voter can be identified, other then the numbering by the deputy returning officer in the cases hereinbefore provided for."

Then the second section provides:

"The other ballot papers being counted, and a list kept of the number of votes given to each candidate, and of the number of rejected ballot papers, all the ballot papers indicating the votes given for each candidate respectively, except as in this section is hereinafter provided, shall be put into separate envelopes."

Now, the exception from that "as hereinafter provided" refers to the particular class of votes that are in appeal. The third sub-section reads as follows:—

"The deputy returning officer shall also, in counting the ballots, place in two separate envelopes or parcels, the two classes of ballot papers of persons whose right to have their names registered upon the list of voters and to vote at such elections, and of persons the exclusion of whose names from the said list as voters, are respectively the subjects of undecided appeal."

And it further provides:

"He shall keep a list of each of the said classes of ballots."

What is the meaning of "keeping a list of each class?" Why, Sir, as we see before the use of these words, that he shall enumerate each class, not that he shall confuse them indiscriminately by enumerating them together, but that he shall enumerate each class of ballots, those about which there is a controversy or dispute as to the rights of the parties to vote, and those about whose right to vote there is no dispute. Now, when we look at the 58th section we find this enumeration of the two classes of voters separately and distinctly, still further emphasized. Section 58 says:

"The deputy returning officer shall make out a statement of the accepted ballot papers, of the number of votes given to each candidate, of the ballot papers counted, which were deposited by persons whose right to be registered on the list of voters and to vote,"——

That is one class—

—"and by persons the exclusion of whose names from the list of voters appeared by the said list to be the subjects of undecided appeal as aforesaid."

Here the enumerations of these two classes of voters are still to be kept distinct by the deputy returning officer. If we read this section with the words that are intended to be supplied, which is the subject of the first predicate, and which also is the implied subject of the second predicate, it would read as follows :—

"The deputy returning officer shall make out a statement of the accepted ballot papers, of the number of votes given to each candidate, of the ballot papers counted which were deposited by persons whose right to be registered on the list of voters and to vote, and of the number of votes given to each candidate by persons the exclusion of whose names from the list of voters appeared, &c."

So that there are two distinct enumerations, the enumeration of those whose right to vote is undisputed, and another enumeration of those whose right to vote is a matter of appeal ; and these papers are to be kept separately, are to be sealed up in separate packages, the contents of these packages are to be carefully noted upon the back of the envelopes, and they are to be placed in the ballot boxes, and the ballot boxes are to be returned with them to the returning officer. Now, I ask this question at this point, for the purpose of further showing what construction must be put upon those provisions of the law which relate to the discharge of duties by the returning officer himself. If the returning officer was to count those ballots indiscriminately, if he was to confuse the ballots of these two classes, which the deputy returning officer is required to keep separate, and which he is instructed in the clearest possible manner to keep separate, for what purpose would separation be made ? If the returning officer was not called upon to keep them separate and to make separate additions of those two different classes of voters, those about whose votes there is no dispute, and those that are the subject of contention, why should the deputy returning officer be required to keep them separate ? If they were to be added together, then those provisions pointing out with such minuteness and detail the duties of the deputy returning officer would be altogether without meaning, they would be nugatory, they would have no force, they would be perfectly aimless, accomplishing nothing, simply provisions altogether without object. I do not so understand the statute. I think they are to be kept separate for a specific purpose. They are to be kept separate because there are to be separate additions made by the returning officer as well as by the deputy returning officer. The next provision of the Act to which I wish to call the attention of the House is section 50. This section provides that the returning officer at the close of the polls, after having received all the ballot boxes, shall proceed to open them in the presence of the election clerk, the candidates, or their representatives, if present, or of at least three electors, and so on ; and that the candidate who has on counting up the votes a majority of the votes, shall be then declared elected. If you were to read that section by itself you would say that the returning officer must add up those votes and must declare the candidate having a majority elected, without reference to the distinction that has been made before. But if you read all the provisions of the Act relating to the duties of the returning officer, it becomes perfectly obvious that the distinction made is intended to be kept strictly in view. Immediately after, in section 62—and I shall endeavour to make this matter clear —you will see that if the ballot box is lost, if any of the ballot boxes are not returned at the appointed time, he may postpone action and wait until a subsequent day. And so in section 63 provision is made for the loss of ballot boxes. But it is important to read in connection with this the provision of the law of last year. It amends section 62, and it provides as follows as regards the returning officer :

"In case any deputy returning officer has not duly enclosed in the ballot box the said statement of the ballot papers counted by him as required by this Act, or if for any other cause the said returning officer cannot at the day and hour appointed by him for that purpose ascertain the exact number of votes given for each candidate, the returning officer may thereupon adjourn to a future day and hour the said summing up the number of votes given for each candidate, and so from time to time, such adjournment or adjournments not in the aggregate to exceed two weeks."

There the duty of the returning officer in regard to counting the votes is set out ; and I claim that looking at what the law intends with respect to these votes that are to be subject to appeal, that right to remain on the list must be decided before a proper return can be made ; and it is perfectly clear from that provision that the returning officer is not in a position to sum up the votes as required by the law, as amended last session, until the question as to the right of those parties whose votes are in appeal is decided. Let us further look at the provisions of the Act on this subject. By section 35 of the Electoral Franchise Act, it is provided that the judge shall, upon receiving the said notice of appeal, and copy of the decision appealed from, appoint a convenient time and place for the hearing of the appeal. What is meant by his appointing a convenient time and place ? Does it mean an indefinite time, a time that you cannot at the moment the appointment takes place ascertain? I do not think so. I hold that it is clear from the provisions of this statute that this cannot be the case. The judge considered these matters in November last. Certain cases were taken before him on appeal. He dealt with those cases. He decided that he would not hear any evidence anew, that he would not make any investigation for himself, that he would take the evidence as it had been taken by the revising officer and the report of that officer, and then decide as to the rights of the parties to go on the list and remain there. That was the course he pursued in dealing with, I think, thirty cases. With respect to those parties who had been put upon the list at the preliminary revision or at a preliminary stage of the proceedings, and about whom notice has been given that those names should be struck out on the ground that the parties were not qualified, the revising officer was inclined to hold, in fact he did hold, that the words "not qualified" were not a sufficient designation of the objection to the names of those parties going on the list. In the meantime an appeal was had to the County Court judge from that decision, and the judge expressed himself as follows :—

"I think the notice was invalid under the Act. I do not enter into an academic discussion as to whether it was null and void. I think all that I am required to do is to determine whether it was a valid or invalid notice, and I say it was invalid, and my reason for thus deciding is that no grounds are stated by them why the man's name should be removed, and thus it is invalid under the Act. So far as the rest of the appeal is presented for my consideration, I am of opinion that under the 33rd section my power is confined to the action of the revising officer with the list; that is to say, as to the proper admission of names or exclusion of them, being as to something which is or should be in the list or which ought not to be in it. It is not said that there is an appeal to the county judge as to the proceedings of the revising officer which would be a comprehensive term such as is used in section 26. I consider that I have no authority to interfere with the action of the revising officer in amending or adjourning the court to a future time. Whatever may be the importance of my ruling as to the question whether the notice in question is insufficient or invalid and null and void, as I am pressed to decide, I do so, and rule as I have said, that it is invalid under the Act, and so far the appeal is sustained, but in respect to my authority to interfere with the revising officer's power to order amendment or to adjourn the court I do not entertain the appeal."

Now, Mr. Speaker, the revising officer, upon that ruling of the county judge, refused to proceed. He had adjourned his court to a future day and he had given the parties leave to amend their notice, but after this decision he refused to proceed. The County Court judge himself admits that he had not the power to deal with this question of procedure, that he had no authority under the Act to express an opinion on the subject or to adjudicate on it, and the subject was taken before the Court of Queen's Bench. An application was there made for a writ of mandamus to compel the revising officer to proceed and to discharge his duty, which writ was granted. The decision of the whole court was this: that the notice was sufficient; they dissented from the view taken by the county judge; they held "not qualified" was a sufficient notice. Every one of these persons were on the voters' lists for some qualification or other, and certainly "not qualified" meant not qualified in the character in which they were entered on the list. The Court of Queen's Bench therefore held in the first place that the notice was sufficient, and in the second place that no appeal is given by the Act to the county judge from the revising officer's decision. Therefore, that the proceedings before the County Court judge were *coram non judice*, and so these proceedings being nugatory were set aside. The revising officer acting upon the decision of the Court of Queen's Bench, proceeded to adjudicate upon these names, and 228 of them, all the names that are in controversy, were struck off the voters' lists. That was the decision, although they are subsequently printed on the list. There can be no dispute whatever that the decision was that they should be struck off. Now, there was an appeal from that decision of the Court of Queen's Bench to the Court of Appeals, and the Court of Appeals held that as the revising officer had acted upon the writ and obeyed the command of the court, that there was nothing before the court to decide, and that they were not called upon to say whether the Court of Queen's Bench had the power to order the revising officer to proceed or not. He had acted; he could not recall what he had done, he could not undo what he had done, and the validity of his act would not at all be affected by the question whether the Court of Queen's Bench possessed this power, or whether it did not. But the Court of Appeals held the notice was sufficient. And so the matter stood. Now, Sir, in the first place, when the application was made to the Court of Queen's Bench and the revising officer proceeded with the work of revising the list, an appeal was had; an application was made in the meantime to the county judge to consider by way of appeal the decision of the revising officer in reference to these names. The county judge said: I will not adjudicate upon the matter at present, I will postpone the consideration of the subject until there is a decision by the Court of Appeals. There was a decision by the Court of Appeals, and then an appeal was had from the decision of the Court of Appeals to the Supreme Court of Canada, and when the second application was made the County Court said: I will not adjudicate until there is a decision by the Supreme Court, and so there has been no time and no place fixed to this day for the consideration of these appeals. I wish to call the attention of the House, in the first place, to this matter. It seems to me, from looking at the provisions of the Act, that it is only when a question of merit is involved, a question of the right of the party as a voter to be on the voters' lists, that there is an appeal from the decision of the revising officer to the County Court judge. On a mere matter of procedure—since the revising officer is not bound to conform to the ordinary rules of a court of justice, but is given a greater latitude to enable him to make his proceedings effective, in view of the absence of knowledge of the law by the voters—that in that matter he is acting in accordance with his discretion, and a matter of discretion cannot be a matter of appeal. It is not pretended—or at all events it has not been pretended—that these persons had any right to be on the list, or that they were in any sense qualified by law to vote. That was not the contention; the contention was that the notice to strike off had not been sufficiently definite, and that contention the Court of Appeals and the Court of Queen's Bench both held was an erroneous view. The revising officer proceeded; he heard the evidence so far as there was evidence to submit, and the names of these persons were struck off the roll. Now, if we look at section 64 which provides for a recount under certain circumstances, among other things which are provided for is this:

"That any person voting at such election, whose name was included on any list of voters used at such election, or whose name was excluded from any such list, and whose right to have his name so included on the said list, or the exclusion of whose name from such list, as the case may be, appeared by such list to be the subject of an appeal pending and undecided under the provisions of the Electoral Franchise Act, and that judgment has been rendered on such appeal deciding that such person was not entitled to have his name so registered upon said list, or that the name of such person was properly excluded therefrom, as the case may be."

Now, that is one class of persons, that is one ground upon which a recount by the County Court judge may be sought, but I ask the attention of the House to subsection 2 of this section, which reads as follows:—

"If any such appeal in respect of any person whose name is entered on the poll book as having voted at such election is not decided before the expiration of the said four days allowed for the making of an application for a recount, the time for the making of such application for a recount on the ground of the result of the decision of any such appeal shall be extended for and until the expiration of six days after the decision of any such appeal."

It is not stated that the recount shall be postponed;

but the statement is that the time for making such application for a recount—application to whom? why, to the judge—shall be postponed until the expiration of six days after the decision of the appeal. I would like to know how it is possible for the returning officer to make a return during that period of time, while the question of appeal is undecided. It is perfectly clear that the party has six days after the appeals are decided to make this application. Now, it it were possible for the returning officer to make his return before that period of time, then it is perfectly obvious that he has not the six days to make the application,—that he would not have any time, on this ground, to make the application. He cannot make the application after the return is made; and it is clear as noonday, that under these provisions, the returning officer is estopped from making a return until these appeals are decided. I call your attention further, Sir, to the fact that the two classes of voters under section 68 are to be kept distinct. The returning officer is to enumerate under one class those who are entitled to vote, to whom no exception is taken, and he must make a separate list for those whose cases are in appeal. Now, these two classes cannot be fused together in one enumeration, until this question of appeal is decided; and that appeal is not to be exercised in such a way as to take from the party aggrieved his right to make the application. He is not forced to make his application at once. It is not an application which after it is made is to be postponed. It is this fact which is kept clearly in view by this sub-section, that until six days elapse after these appeals are disposed of, the returning officer cannot make a return. And why should he? What right has he to do so? Suppose 400 or 500 names were improperly put on the list, and were made a subject of appeal just on the eve of an election, is it possible that it could be seriously argued that this House has discharged its duty in so incompetent a way, that it has so far failed to make provision for the proper expression of public opinion, that these votes could be counted before it should be finally determined whether the names ought to be on the voters' list or not? It is clearly the intention of the law that section 60 shall not be read by itself. It must be read in connection with what follows. It is not that sole section which decides what are the duties of the returning officer. His duties are limited and explained further by section 61; they are also limited by section 62, where, if a ballot box is missing, an adjournment is provided for, notwithstanding the clear and positive declarations of section 60; they are further limited by section 63; and they are limited by the amendment of last year, which shows that the votes cannot be counted until it is known whether those persons are really entitled to be so counted or not. In conformity with this construction of the law, you have this provision of section 64:

"If any such appeal in respect of any person whose name is entered on the poll book as having voted at such election is not decided before the expiration of the said four days allowed for the making of an application for a recount, the time for the making of such application for a recount on the ground of the result of the decision of any appeal shall be extended for and until the expiration of six days after the decision of any such appeal."

Why, Sir, if you were to put any other construction on the Act, you would leave a party in an important case without a remedy, except by the active interference of this House to protect itself against a gross wrong. I do not think we are called upon to put such a narrow construction on the Act. We must read all parts of the Act together; we must look at its spirit and at the intention of Parliament as disclosed in the Act; and it is clear, in view of these provisions for a recount, that the returning officer cannot make a return until it is decided whether those parties who have voted, and whose names are in appeal, were or were not entitled under the law to have the elective franchise. Now, Sir, let me read some circumstances connected with the declaration. Mr. Pritchard is the returning officer in the city of London. Mr. Pritchard, when asked to delay making his declaration in accordance with the amendment of the law of last year, said:

"I have no hesitation or doubt in the matter. The question of the undecided appeals is in the hands of the Court of Appeal, and I have nothing to do with it."

Why, Sir, he had everything to do with it. Then Mr. Magee, the counsel for Mr. Hyman, said:

"I would call your attention to the words of sub-section 2 of section 62, and if for any other cause, the said returning officer cannot at the day and hour appointed by him for that purpose ascertain the exact number of votes, &c., he may thereupon adjourn to a future day."

Now, the number of votes was not ascertainable, because those parties' right to vote was a subject still pending. The returning officer opened ballot box number one and declared 73 votes polled for Mr. Carling and 90 for Mr. Hyman. Then Mr. Magee said:

"I call your attention to the fact that there are six of these ballots cast for the Hon. Mr. Carling which were deposited by persons whose right to be registered is disputed."

It seems that instead of the different classes of ballots being kept separate as provided for by section 58, they were mingled together. Mr. Pritchard, the returning officer, said:

"I may as well state here that I have nothing to do with the question of the undecided appeals. I shall simply take the votes that are recorded for Mr. Carling and for Mr. Hyman."

Now, Sir, that is the question of first importance that this House is called upon to consider: Had he nothing to do with it? Had he a right to proceed to sum up the good and the questioned votes together? I think it is clear from the provisions of the Act, that he had not to do it, that he had no power or right to make a return until that question was decided. If he made a return, it is quite clear that it could only be a special return—a return stating that there were so many votes polled for Mr. Carling and so many for Mr. Hyman about which there was no question, and that there were so many for Mr. Carling and so many for Mr. Hyman which were under appeal. But I think, looking at the provisions of the Act of last year, that it is quite clear that no return of any sort ought to be made; no return such as the law contemplates can be made until it is decided whether these votes are to be struck off the list of those entitled to vote, or whether they are to remain. Until that takes place it is not possible to say with absolute certainty who has the majority of legal votes cast at an election. I am not going to discuss this subject further. I have brought this matter to the attention of the House, and have called its attention to the important question of the necessity of insisting that all

officers shall conform to the law and discharge their duties in a fair and impartial manner. I am informed by telegram that the county judge has to-day the question of the undecided appeals before him, and, although in the latter part of November or the early part of December he ruled that he would not take any evidence when appeals were made by the Reform Committee, but would simply decide the question on the evidence as reported by the revising officer, nevertheless to-day a different rule is to be adopted in regard to the other side. I hope that may prove to be an unfounded statement, or, if it is true, that His Honour may reconsider his determination and may act upon the same rule throughout. I think that the importance of the question justifies my bringing it before the House, and I think, also, that the House ought to accept the proposition laid down, that it ought to accept this declaration of its rights and duties, because in my opinion the adoption of such a resolution would have a wholesome effect upon the officers of the House in the discharge of the very important duties which have been assigned to them.

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